

**MINUTES**  
**TEXAS BOARD OF PROFESSIONAL ENGINEERS**  
**REGULAR QUARTERLY BOARD MEETING**  
**1917 IH35 SOUTH**  
**AUSTIN, TX 78741**  
**NOVEMBER 17, 2011 – 10:30 A.M.**

**Call to Order.** G. Kemble Bennett, Ph.D., P.E., Chair, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers (TBPE) to order at 10:30 a.m. on November 17, 2011, at the Texas Board of Professional Engineers, 1917 IH-35 South, Austin, TX. (NOTE: All votes are unanimous, unless noted otherwise.)

**1. Roll Call and Welcome Visitors.**

G. Kemble Bennett, Ph.D., P.E.	Chair
Daniel Wong, Ph.D., P.E.	Vice Chair
Edward L. Summers, Ph.D.	Treasurer
Carry A. Baker	Member
Lamberto "Bobby" Balli, P.E.	Member
Govind Nadkarni, P.E.	Member

A quorum was present. Mr. Kevin Heyburn, Assistant Attorney General, was present to provide legal counsel. Also present were Emeritus Board Members Mr. Edmundo Gonzalez, P.E., and Mr. Jose Guerra, P.E.

**The following staff members were present:**

Lance Kinney, P.E.	Executive Director
Priscilla Piphon, MPA	Deputy Executive Director
C.W. Clark, P.E.	Director of Compliance & Enforcement
David L. Howell, P.E.	Director of Licensing
Jeff Mutscher	Director of Finance
Dewey Helmcamp, III, JD	Staff Attorney
Clif Bond	Supervising Investigator
Tyler Ferguson	Investigator
Dorothy Gonzales	Executive Assistant

**Visitors;** Carol and Ron Hemphill; Doug Bell, P.E., Texas Society of Professional Engineers (TSPE); Stephanie M. Stanford, TSPE; Alexis Dick-Paolik, Texas Department of Insurance (TDI); Mr. Harvey Cappel, P.E.; Garland Copelin, P.E., G.L. Copelin, Inc.; Iden I. Trevino; Trish Smith, Executive Director, TSPE; Molly Rutledge; Leo Ruiz; Peyton McKnight, American Council of Engineering Companies – Texas (ACEC-Texas); Sam Nelson, P.E., TDI; Al Kosik, P.E., Texas Department of Transportation (TXDOT); Jennifer McEwan, Legislative and Governmental Director, TSPE.

2. **Public Comment.** Mrs. Carol Hemphill addressed the Board and expressed the following concerns: She believes that the TBPE Rules and Sunset Commission recommendations are not being followed. She shared her experience regarding a complaint she and her husband filed, and the two-year process that, in her opinion, was too difficult. She stated her opinion that the function of the Board is to protect the public not engineers and that the engineer she filed against is incompetent and dishonest. She shared the experience that she and her family are going through regarding their home. She commented that she will be taking her evidence to the District Attorney and that she will be speaking to the Sunset Commission. She said that the Board cannot help or fix her problem and that her reason for commenting is for the future of engineering and the public of Texas. Dr. Bennett thanked Mrs. Hemphill and assured her that all comments are taken very seriously by the Board. No action taken.

3. **Consent Agenda.**

**(The following items may be acted upon under Consent Agenda and are marked with an asterisk\* on the Regular Quarterly Board Meeting Agenda)**

- \* August 17, 2011, Licensing Committee Minutes (See agenda item #5)
- \* August 18, 2011, Enforcement Committee Minutes (See agenda item #6)
- \* August 18, 2011, General Issues Committee Minutes (See agenda item #7)
- \* August 18, 2011, Regular Quarterly Board Meeting Minutes (See agenda item #4 )
- \* Administrative Reports and Outstanding Administrative Penalties and Dismissed Cases (See agenda item #18)
- \* Licensing Applications. (See agenda item #23)

It was MOVED/SECONDED (Balli/Nadkarni) to approve the Consent Agenda as presented. A vote was taken and the MOTION PASSED.

**Discuss and Possibly Approve Board Minutes:**

4. **\*(Consent Agenda)** Discuss and possibly approve minutes of the August 18, 2011,  
Regular Quarterly Board Meeting Minutes

**Discuss and Possibly Accept Committee Minutes:**

G. Kemble Bennett, Ph.D., P.E.

5. **\*(Consent Agenda)** August 17, 2011, Licensing Committee Minutes  
6. **\*(Consent Agenda)** August 18, 2011, Enforcement Committee Minutes  
7. **\*(Consent Agenda)** August 18, 2011, General Issues Committee Minutes

Agenda items 4-7 were approved under Consent Agenda, see agenda item #3.

**Discuss and Possibly Act on Reports:**

8. **Board Members' Activity Reports.**

Bennett  
Baker  
Ballí  
Greer  
Nadkarni  
Reyna  
Summers  
Wong

Activity reports are included for information purpose only, no action required.

9. **Emeritus Members' Activity Reports.**

Gonzalez  
Guerra

Emeritus Members' activity reports are included for information purposes only and no action was required. Mr. Gonzalez shared his experience on his visit to West Texas A&M.

10. **Budget.**

- FY 11 4<sup>th</sup> Quarter Budget Report
- FY 11 Annual Financial Report (AFR)
- FY 11 SDSI, Article 8930, Sec. b Report

Mr. Mutscher reviewed the end of year reports for August 31, 2011, and other exhibits with the Board. He reviewed the line item budgets for the FY11 4<sup>th</sup> quarter budget report for revenue and expenditures. He commented that this same information is in the AFR. The 8930 Section (b) report is required by statute. Mr. Mutscher reported that the Executive Director was awarded a salary increase in accordance with his performance evaluation completed by the Board Chair. Dr. Summers, the Board liaison to staff on financial matters commented that he agreed with Mr. Mutscher's report.

11. **Performance Measures.**

Mr. Howell reported that there are 40 performance measures that are tracked by staff.. Performance measures for exam registration and online registration have been removed because these tasks will be done through NCEES. Mr. Howell said that the agency is going through a continuous improvement process, and the performance measures will be evaluated and possibly changed. Future performance measures will show a goal, targets, and benchmarking which will make them more usable, and will be part of the improvement process. Dr. Bennett commented that time series oriented data is good news; improvements can be seen.

Agenda item #13 was taken out of order, see below.

12. **Personnel Matters—this agenda item will be considered under executive session as authorized under Government Code §551.074.**

The Board Chair called the meeting into Executive Session at 12:17 pm in accordance with Government Code §551.74, to discuss personnel matter. The Executive Director was asked to stay. The Board reconvened from Executive Session at 12:31 pm, no action was taken during Executive Session.

**Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:**

13. **Enforcement Committee.**

Dr. Summers, on behalf of Dr. Raba, reported on the following:

- Discuss and possibly act on the following rule adoptions

- §137.51 General Practice. Mr. Clark reported that the change to this rule is to replace “promptly” with “21 days” and this change will specify the amount of days a respondent has to respond to correspondence from the board.
- §139.35 Sanctions and Penalties. Mr. Clark stated that the change to this rule is to add sanctions and penalties to the two new rules added regarding windstorm inspectors, and to remove the term “probated” from the sanction table and clarify that proposed sanctions include suspensions, which might be probated in certain circumstances.. Comments were received, and a response was provided to all the comments.

It was MOVED/SECONDED (Summers/Wong) to adopt §§137.51 General Practice, and 139.35 Sanctions and Penalties as presented to the Board. A vote was taken and the MOTION PASSED.

Dr. Summers reported that Mr. Clark also reported on 11 new processes that will be changing in Compliance & Enforcement in conjunction with process improvements. He added that the Committee also heard an updated report from the Staff Attorney on SOAH Cases, Suits Against the Board, and the Status of Court Cases (Injunctions). The Committee heard from Mr. Kinney on the positive remarks and improvements on these issues by Mr. Helmcamp.

Dr. Summers commented that the Board needs to hear and consider action on Charles Bass Urban, P.E. – D-31962 & D-31993. Dr. Summers asked Mr. Helmcamp to outline Mr. Urban’s case. Mr. Helmcamp reported that Mr. Urban did not appear at the SOAH hearing which resulted in the case being dismissed and returned to the Agency for an entry of a Final Order. Mr. Helmcamp asked the Board to consider action on the Final Order as presented to the Board for Mr. Charles Bass Urban, P.E. – D-31962 & D-31993.

It was MOVED/SECONDED (Summers/Baker) to approve the Final Order for Mr. Charles Bass Urban, P.E. – D-31962 & D-31993 as presented to the Board. Mr. Nadkarni recused himself from voting on this issue. A vote was taken and the MOTION PASSED.

#### 14. **General Issues Committee.**

Dr. Wong reported on the following:

- §131.15—Committees. This rule change removes the Joint Advisory Committee (JAC) from the Board rules as provided by the recent statutory change. There were no comments received on this rule.

It was MOVED/SECONDED (Wong/Summers) to adopt §131.15 Committees as presented to the Board. A vote was taken and the MOTION PASSED.

- §137.19- Engineers Qualified to be Texas Windstorm Inspectors. This was a new rule to comply with HB3. The Committee voted unanimously to adopt this rule. Dr. Wong recognized and thanked TDI for their efforts in working with TBPE staff in making this process easy. Mr. Kinney commented that this rule creates a list of PEs who are qualified to be windstorm inspectors, but application and review of applications to be inspectors will still be done by TDI. Mr. Kinney also thanked TDI for their assistance with implementing this rule, and for participating in a joint effort in the outreach presentations. Mr. Cappel addressed the Board and commented that to his understanding that this is not an additional certification and not a new type of engineer. Ms. Dick-Paclik added that the current list of inspectors is still in place.

It was MOVED/SECONDED (Wong/Summers) to adopt §137.19, Engineers Qualified to be Texas Windstorm Inspectors, as presented to the Board. A vote was taken and the MOTION PASSED.

#### 15. **Policy Advisory Opinion Committee.**

Mr. Ballí reported that the Committee heard one policy advisory regarding the Designated Engineering Representative process by the FAA. He asked Mr. Pennington to provide an update to the Board about the request, staff opinion, and recommendation. Mr. Ballí added that after Mr. Pennington concludes his report, he will provide the Committee’s recommendation.

- EAOR #31-Designated Engineering Representative (DER)—Consideration of whether a DER is required to be licensed in Texas.

Mr. Pennington reported to the Board that the request was regarding whether a DER appointed by the FAA is required to be licensed by the Board. A DER is a person that applies to the FAA to perform engineering services on behalf of the FAA. This program was established to assist with these duties because the FAA does not have enough employees to complete these duties. Mr. Pennington reviewed the FAA requirements to become a DER. DER’s usually are hired by aircraft manufacturers and write engineering reports concerning updates and modifications to manufactured aircraft, and submit the report to the FAA for their approval. Since these individuals are acting as consultants, the question is, should they be licensed engineers? Mr. Pennington provided statistics to the Board on how many DERs are already licensed in Texas. He reported that there are several exemptions that could apply, however, none are a perfect fit. The federal exemption may not apply because they are not employees or a Federal officer; and the manufacturing exemption may not apply since they are not exactly working exclusively for the manufacturer. So their activities fall in the middle of the listed exemptions. Other state Boards’ opinions are mixed. Mr. Balli commented that the Committee discussed at length including previous experience, and appointed Mr. Nadkarni as the liaison to work with staff on this opinion. The Committee tabled this agenda item, directed staff to research further, to work with the Board liaison assigned, and to provide results at the next scheduled Committee meeting.

It was MOVED/SECONDED (Balli/Nadkarni) to table this agenda item until the next scheduled Policy Advisory Opinion Committee. A vote was taken and the MOTION PASSED.

**16. Licensing Committee.**

Ms. Baker reported on the following on behalf of the Chair. Ms. Baker thanked Mrs. Hemphill for her public comment at the Licensing Committee meeting. She added that Mr. Kinney asked Mrs. Hemphill to make a formal request in writing.

- **Personal Appearances from Licensing Applicants.**

She reported that there were six (6) applicants before the Committee.

Mr. Barber—The Licensing Committee recommended to table his application due to an issue about his education documentation; the Committee directed staff to look into this issue and present at the February 2012 meeting.

The Committee recommended the following action on the following applicants:

Mr. Cannon-The Licensing Committee recommended approval for Mr. Cannon to sit for the PE exam upon taking and successfully completing the Level I Ethics course at Texas Tech.

Mr. Denson-The Licensing Committee recommended the Board hold his application until he gains two (2) years of additional experience and successfully completes the Level I Ethics Course at Texas Tech. Mr. Denson must update his application, the four (4) references already provided; and acquire two (2) character references.

Mr. Fielder—The Licensing Committee recommended Mr. Fielder be approved to take the PE exam.

Mr. Moran—The Licensing Committee recommended the Board hold Mr. Moran's application for one year, that he gain one (1) year of additional engineering experience, at which time he must update his application information, provide three (3) additional references, and appear before the Licensing Committee before October 2012.

Mr. Schalekamp - Mr. Schalekamp appeared before the Committee in 2009 but no action had been taken because of a subsequent criminal action. His application was tabled at that time. Since then, the charge was dismissed and he reappeared for the committee. The Licensing Committee recommended he be approved to take the PE exam.

It was MOVED/SECONDED (Baker/Summers) to approve the Licensing Committee's recommendations as reported. A vote was taken and the MOTION PASSED.

- **Criminal Conviction Policy Statements.**

- Criminal History Policy for Applications
- Criminal Convictions for Licensee

Ms. Baker reported that the current Criminal Conviction Policy Statement was separated into two policies. These policies are required to be published in the Texas Register. After discussion, the Committee unanimously agreed and recommended that the two policies are to be posted in the Texas Register as presented.

It was MOVED/SECONDED (Baker/Summers) to approve the two criminal history policies and post them in the Texas Register. A vote was taken, and the MOTION PASSED.

**Discuss and Possibly Act on Reports or Items reported by the Executive Director:**

**17. Executive Director's Report.**

- Activity Report. Included for review.
- Introduction of new employees. Mr. Kinney introduced Ruschelle Robinson and Iris Castro.
- Report NCEES Annual Meeting, August 24-27, 2011. Mr Kinney gave a brief report on the annual meeting in Rhode Island. Two main issues was the pricing for Computer Based Testing which was approved: the FE exam will be \$250 in 2014; and BS+30 alternatives.
- State Auditor Office Audit. Mr. Kinney mentioned to the Board that the audit started. Dr. Summers commented that the last audit was three (3) years ago. He commented that the auditors do meet on a weekly basis with the staff. Mr. Kinney commented that staff is ready to work with the auditors..
- Engineers & Architects update. Mr. Kinney commented that currently TBAE is in the phase of reviewing applications for PEs. Mr. Howell participated in an outreach presentation with the TBAE to get the word out. Mr. Kinney commented that the feedback received was positive.
- Windstorm Inspection Update – This update was covered under previous discussions of rules related to Windstorm issues.

- Sunset Review Update. The self report has been submitted. The review is tentatively scheduled for end of June or early July.
- TBPE Agency Staff Development. Staff participated in a training involving the new improvement process, and personnel participated in a retreat.
- Rebranding. Mr. Kinney reported that this is to have a unified look for the Board.
- Outreach Activities. Mr. Kinney reported that staff is working hard to reach out to the public and the profession. He thanked staff, board members, and emeritus members for their efforts on outreach.
- E-newsletter Kudos. Included as an exhibit for the Board.

**Discuss and Possibly Act on Enforcement/Disciplinary Matters:**

**18. \*(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments.**

Agenda item #18 was approved under Consent Agenda, see agenda item #3.

**19. Agreed Board Orders.**

1. Masood E. Bhatti, P.E. – D-32501 (Greer)  
Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are not listed)
2. D-32069 (Nadkarni)
3. D-32420 (Greer)
4. D-32137 & D-32561 (Greer)

It was MOVED/SECONDED (Ballí/Summers) to approve the Agreed Board Orders as submitted. Mr. Nadkarni recused himself from voting on Agree Board Order #2. Mr. Greer was not present to cast a vote. A vote was taken and the MOTION PASSED.

**20. Consent Orders.**

Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are not listed)

5. D-32990

Sanctions Against Non-License Holders

6. Double Diamond, Inc. – B-32627

Firm Registrations/Sole Proprietorship Sanctions

7. CMT-TEC, L.L.C. – B-33105
8. Montemayor Engineering, Inc. - B-32999
9. Preston Engineering and Construction, Inc. – B-32856

It was MOVED/SECONDED (Ballí/Nadkarni) to approve the Consent Orders as submitted. A vote was taken and the MOTION PASSED.

**21. Order of the Board – Voluntarily surrendering Texas License.**

- Robert Alan Walz, P.E.—D-32517

Mr. Clark reported Mr. Walz notified the Board a week prior to the SOAH hearing that he would like to surrender his license. The Board rule states that a licensee may surrender their license if they are in good standing. An affidavit was written showing that Mr. Walz is voluntarily surrendering his license and it implies that the Board will revoke his license. This has been done in the past and it does require ratification by the Board. Mr. Helmcamp supported Mr. Clark's comment, and informed the Board that Mr. Walz practices in other states.

It was MOVED/SECONDED (Nadkarni/Summers) to approve the Board Order that accepts the surrendering of Mr. Walz's license. A vote was taken and the MOTION PASSED.

**22. Discuss, possibly act on request to reconsider Approved Board Order.**

- Iden Trevino, P.E. Mr. Clark gave a brief summary of complaints filed against Mr. Trevino and the consent order signed by Mr. Trevino last August which the Board approved. The order issued a two (2) year suspension which was fully probated contingent on him paying an administrative penalty, which he has paid, and also required that he take and successfully complete the Level I Ethics Course, which he has completed. The order was also further contingent on the respondent not being found in violation of a separate offense during set period by the Board. Following the August Board action, another complaint was received which was completed by another signed Board Order by Mr. Trevino. This Board order was a one year suspension. Because of the previously signed Board Order, this new order established the one (1) year probated suspension would not start until the end of the previous order. Because of the second order violated the first order, his license was suspended until the completion of the first order. Mr. Trevino appealed these to the Board in February, and Board did not take action. He is before the Board to appeal again due to certain circumstances that have altered his professional practice. Mr. Trevino explained that his Fire Inspector Design and Inspection RME license could not be renewed due to his PE license being suspended. He is appealing to the Board to reinstate his license so that he may apply for

the RME license again. The Board discussed the suspension of Mr. Trevino's license, and his request for reinstatement. Mr. Trevino commented that his license has been suspended for a full year. Mr. Clark commented that staff prepared the second consent order because they were not sure if Mr. Trevino would sign the initial consent order. Dr. Bennett asked Mr. Trevino the basis for his request. Mr. Trevino responded that it has been a hardship on his personal and professional life.

It was MOVED/SECONDED (Summers/Nadkarni) that the suspension of Mr. Trevino's license to be converted to probation through August 2013.

Mr. Balli asked Mr. Clark if Mr. Trevino is in this bind due to a technicality. Mr. Clark responded that it is a legal consent order that he signed and Mr. Trevino should have understood. He added that both consent orders were signed in sequence that created the suspension.

A vote was taken, and the MOTION FAILED 1-yes, 5-no. Dr. Summers- voted in favor; Dr. Bennett, Dr. Wong, Ms. Baker, Mr. Balli, and Mr. Nadkarni, - voted against the motion.

Mr. Helmcamp, staff attorney, commented that the Board can recommend an action to modify the change to Mr. Trevino's status; staff will then craft an amended order of the Board.

It was MOVED/SECONDED (Balli/Summers) to allow Mr. Trevino to resume practice and probate his suspension to August 2014.

Mr. Helmcamp commented that staff will include in the amended consent order that the previous consent orders would hereby be amended by decision of the Board on November 17, 2011, to lift the active suspension as of the date of the consent order, and extend the probation period until August 2014.

A vote was taken, and the MOTION PASSED 4-1-1. Dr. Bennett, Dr. Summers, Ms. Baker, Mr. Balli-voted in favor; Dr. Wong-voted against; Mr. Nadkarni abstained from voting.

- Leonel Ruiz, P.E. Mr. Ruiz addressed the Board and requested to withdraw his request to appear before the Board on November 17, 2011, regarding an extension to complete his Ethics course. He mentioned that he will complete his ethics course in a timely manner. The Board accepted his withdrawal.

The Board Chair called the meeting into executive session at 12:17 pm on agenda item 12 to consider personnel matters as authorized under section 551.074 of the Act. Mr. Lance Kinney, Executive Director with the Board, was asked to stay, all other staff and public was asked to leave the room.

The Board Chair called the meeting back to order at 12:31 pm. No action was taken during executive session.

#### **Discuss and Possibly Act on Licensing Applications Requiring Board Ruling:**

##### **23. [\\*\(Consent Agenda\)](#) Licensing Applications.**

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

Approved for Licensure

Not Approved for Licensure

Waivers – Both

Waivers – FE

Approved for Exams

Firms Approved

Agenda item #23 was approved under Consent Agenda, see agenda item #3.

#### **Discuss and Possibly Act on Other Matters**

##### **24. Issues from Board members for future meetings.**

##### **25. Future TBPE meeting dates.**

Mr. Kinney mentioned that the February Board meetings will be on a Tuesday and Wednesday

#### **Adjourn.**

It was MOVED/SECONDED (Wong/Nadkarni) to adjourn the meeting at 12:34 pm. A vote was taken and the MOTION PASSED.

Date approved by the Board as submitted: February 15, 2012